

## §76.916

over basic service rates until an authority becomes recertified. The Commission will also notify the franchising authority regarding the corrective action that may be taken.

(c) A cable operator may file a petition for special relief pursuant to §76.7 of this part seeking revocation of a franchising authority's certification.

(d) While a petition for revocation is pending, and absent grant of a stay, the franchising authority may continue to regulate the basic service rates of its franchisees.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17972, Apr. 15, 1994; 64 FR 6572, Feb. 10, 1999]

### §76.916 Petition for recertification.

(a) After its request for certification has been denied or its existing certification has been revoked, a franchising authority wishing to assume jurisdiction to regulate basic service and associated equipment rates must file a "Petition for Recertification" accompanied by a copy of the earlier decision denying or revoking certification.

(b) The petition must:

(1) Meet the requirements set forth in 47 U.S.C. 543(a)(3);

(2) State that the cable system is not subject to effective competition; and

(3) Contain a clear showing, supported by either objectively verifiable data such as a state statute, or by affidavit, that the reasons for the earlier denial or revocation no longer pertain.

(c) The petition must be served on the cable operator and on any interested party that participated in the proceeding denying or revoking the original certification.

(d) Oppositions may be filed within 15 days after the petition is filed, and must be served on the petitioner. Replies may be filed within seven days of filing of oppositions, and must be served on the opposing party(ies).

### §76.917 Notification of certification withdrawal.

A franchising authority that has been certified to regulate rates may, at any time, notify the Commission that it no longer intends to regulate basic cable rates. Such notification shall include the franchising authority's determination that rate regulation no

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longer serves the interests of cable subscribers served by the cable system within the franchising authority's jurisdiction, and that it has received no consideration for its withdrawal of certification. Such notification shall be served on the cable operator. The Commission retains the right to review such determinations and to request the factual finding of the franchising authority underlying its decision to withdraw certification. The franchising authority's withdrawal becomes effective upon notification to the Commission.

[59 FR 17972, Apr. 15, 1994]

### §76.920 Composition of the basic tier.

Every subscriber of a cable system must subscribe to the basic tier in order to subscribe to any other tier of video programming or to purchase any other video programming.

### §76.921 Buy-through of other tiers prohibited.

(a) No cable system operator, other than an operator subject to effective competition, may require the subscription to any tier other than the basic service tier as a condition of subscription to video programming offered on a per channel or per program charge basis. A cable operator may, however, require the subscription to one or more tiers of cable programming services as a condition of access to one or more tiers of cable programming services.

(b) A cable operator not subject to effective competition may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per-channel or per-program charge basis.

(c) With respect to cable systems not subject to effective competition, prior to October 5, 2002, the provisions of paragraph (a) of this section shall not apply to any cable system that lacks the capacity to offer basic service and all programming distributed on a per channel or per program basis without also providing other intermediate tiers of service:

(1) By controlling subscriber access to nonbasic channels of service through addressable equipment electronically

controlled from a central control point; or

(2) Through the installation, non-installation, or removal of frequency filters (traps) at the premises of subscribers without other alteration in system configuration or design and without causing degradation in the technical quality of service provided.

(d) With respect to cable systems not subject to effective competition, any retiering of channels or services that is not undertaken in order to accomplish legitimate regulatory, technical, or customer service objectives and that is intended to frustrate or has the effect of frustrating compliance with paragraphs (a) through (c) of this section is prohibited.

[62 FR 6495, Feb. 12, 1997]

**§ 76.922 Rates for the basic service tier and cable programming services tiers.**

(a) *Basic and cable programming service tier rates.* Basic service tier and cable programming service rates shall be subject to regulation by the Commission and by state and local authorities, as is appropriate, in order to assure that they are in compliance with the requirements of 47 U.S.C. 543. Rates that are demonstrated, in accordance with this part, not to exceed the "Initial Permitted Per Channel Charge" or the "Subsequent Permitted Per Channel Charge" as described in this section, or the equipment charges as specified in § 76.923, will be accepted as in compliance. The maximum monthly charge per subscriber for a tier of regulated programming services offered by a cable system shall consist of a permitted per channel charge multiplied by the number of channels on the tier, plus a charge for franchise fees. The maximum monthly charges for regulated programming services shall not include any charges for equipment or installations. Charges for equipment and installations are to be calculated separately pursuant to § 76.923. The same rate-making methodology (either the benchmark methodology found in paragraph (b) of this section, or a cost-of-service showing) shall be used to set initial rates on all rate regulated tiers, and shall continue to provide the basis for subsequent permitted charges.

(b) *Permitted charge on May 15, 1994.*

(1) The permitted charge for a tier of regulated program service shall be, at the election of the cable system, either:

(i) A rate determined pursuant to a cost-of-service showing;

(ii) The full reduction rate;

(iii) The transition rate, if the system is eligible for transition relief; or

(iv) A rate based on a streamlined rate reduction, if the system is eligible to implement such a rate reduction. Except where noted, the term "rate" in this subsection means a rate measured on an average regulated revenue per subscriber basis.

(2) *Full reduction rate.* The "full reduction rate" on May 15, 1994 is the system's September 30, 1992 rate, measured on an average regulated revenue per subscriber basis, reduced by 17 percent, and then adjusted for the following:

(i) The establishment of permitted equipment rates as required by § 76.923;

(ii) Inflation measured by the GNP-PI between October 1, 1992 and September 30, 1993;

(iii) Changes in the number of program channels subject to regulation that are offered on the system's program tiers between September 30, 1992 and the earlier of the initial date of regulation for any tier or February 28, 1994; and

(iv) Changes in external costs that have occurred between the earlier of the initial date of regulation for any tier or February 28, 1994, and March 31, 1994.

(3) *March 31, 1994 benchmark rate.* The "March 31, 1994 benchmark rate" is the rate so designated using the calculations in Form 1200.

(4) *Transition rates—(i) Termination of transition relief for systems other than low price systems.* Systems other than low-price systems that already have established a transition rate as of the effective date of this rule may maintain their current rates, as adjusted under the price cap requirements of § 76.922(d), until two years from the effective date of this rule. These systems must begin charging reasonable rates in accordance with applicable rules, other than transition relief, no later than that date.